

House File 337 - Introduced

HOUSE FILE 337

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A BILL FOR

1 An Act modifying provisions relating to the regulation of
2 delayed deposit services businesses, making penalties
3 applicable, and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 533D.9, subsection 2, paragraph b, Code
2 2011, is amended to read as follows:

3 b. The annual percentage rate as computed pursuant to the
4 federal Truth in Lending Act. The annual percentage rate
5 shall not exceed thirty-six percent, as computed pursuant to
6 the federal Truth in Lending Act, unless a licensee makes
7 an election and submits to the indebtedness limitations and
8 electronic database reporting requirements specified in section
9 533D.10A.

10 Sec. 2. Section 533D.9, subsection 2, Code 2011, is amended
11 by adding the following new paragraph:

12 NEW PARAGRAPH. e. That the licensee cannot initiate debt
13 collection procedures, civil court proceedings, or arbitration
14 to collect an unpaid check unless the licensee has provided
15 the maker of the check the opportunity to repay the obligation
16 without any additional charges, other than the penalty provided
17 in paragraph "d" of this subsection, in biweekly payments of
18 not more than ten percent of the face of the check until the
19 debt is paid in full. Additionally, that during this repayment
20 period the licensee may not transfer or sell the debt owing on
21 the unpaid check, and the loan shall not be considered to be
22 in default. Further, that the maker of the check's failure
23 to make a biweekly payment under this paragraph shall place
24 the loan in default and the licensee may, after proper notice,
25 exercise rights against the maker under the law.

26 Sec. 3. Section 533D.10, subsection 1, Code 2011, is amended
27 to read as follows:

28 1. A licensee shall not do any of the following:

29 a. Hold from any one maker more than two checks at any one
30 time.

31 b. Hold from any one maker a check or checks in an aggregate
32 face amount of more than five hundred dollars at any one time.

33 c. Hold or agree to hold a check for ~~more~~ less than
34 ~~thirty-one~~ fourteen days.

35 d. Require the maker to receive payment by a method which

1 causes the maker to pay additional or further fees and charges
2 to the licensee or another person.

3 e. Repay, refinance, or otherwise consolidate a postdated
4 check transaction with the proceeds of another postdated
5 check transaction made by the same licensee. A licensee may
6 not enter into another delayed deposit services transaction
7 with the maker of a check if the licensee presently has a
8 transaction outstanding with the maker or if the maker had a
9 previous transaction with the licensee within two days of the
10 new transaction, unless the licensee has provided the following
11 notice both verbally and in writing, and the maker has
12 acknowledged receipt of the notice with a signature and date:

13 Notice to Borrower

14 (1) The licensee may not repay, refinance, or otherwise
15 consolidate a postdated check transaction with the proceeds of
16 another postdated check transaction made by the same licensee.

17 (2) While a licensee may charge a penalty if a check is
18 not negotiable on the date agreed upon, the penalty shall not
19 exceed fifteen dollars. This penalty shall only be collected
20 by the licensee once on a check no matter how long that check
21 remains unpaid. This penalty is the only additional charge
22 a lender may charge you (the borrower) when a check is not
23 negotiable on the date agreed upon.

24 (3) If your check is not negotiable on the date agreed upon,
25 the licensee must provide you (the borrower) the opportunity
26 to repay the obligation without any additional charges, other
27 than the penalty described above, in biweekly payments of not
28 more than ten percent of the face of the check until the debt is
29 paid in full.

30 By signing and dating this notice, you acknowledge the
31 statements above, but yet still desire to obtain another loan
32 with the licensee.

33 Borrower(s) signature: _____ Date: _____

34 Borrower(s) signature: _____ Date: _____

35 f. Receive any other charges or fees in addition to the fees

1 listed in section 533D.9, subsections 1 and 2.

2 g. Initiate debt collection procedures, civil court
 3 proceedings, or civil or private arbitration proceedings to
 4 collect an unpaid check unless the licensee has provided the
 5 maker the opportunity to repay the obligation without any
 6 additional charges, other than the penalty provided in section
 7 533D.9, subsection 2, paragraph "d", in biweekly payments of not
 8 more than ten percent of the face of the check until the debt
 9 is paid in full. During this repayment period the licensee
 10 may not transfer or sell the debt owing on the unpaid check,
 11 and the loan shall not be considered to be in default. The
 12 failure of the maker of the check to make a biweekly payment as
 13 required shall place the loan in default and the licensee may,
 14 after proper notice, exercise rights against the maker under
 15 the law.

16 Sec. 4. **NEW SECTION. 533D.10A Alternative annual percentage**
 17 **rate — indebtedness limitation — electronic database.**

18 1. A licensee may elect to impose an annual percentage rate,
 19 as computed pursuant to the federal Truth in Lending Act, which
 20 exceeds thirty-six percent by filing with the superintendent a
 21 written notice of intent. An election pursuant to this section
 22 shall apply to all delayed deposit services transactions
 23 entered into by the licensee. A licensee having made an
 24 election pursuant to this section who desires to discontinue
 25 imposition of an alternative interest rate and consents
 26 to imposition of the thirty-six percent annual percentage
 27 rate otherwise applicable under this chapter, or a licensee
 28 previously imposing an annual percentage rate not exceeding
 29 thirty-six percent who desires to make an election pursuant to
 30 this subsection, may submit a request to the superintendent,
 31 not more than once a year.

32 2. A licensee electing to impose an alternative annual
 33 percentage rate pursuant to this section shall be prohibited
 34 from entering into a delayed deposit services transaction which
 35 will cause the maker of the check, when all other delayed

1 deposit services transactions entered into with any licensee
2 involving the maker of the check are accounted for, and when
3 the term of the transaction is aggregated with the other
4 transactions, to be indebted for a period exceeding ninety
5 days during the preceding twelve-month period. For purposes
6 of this paragraph, if the maker of the check has entered
7 into more than one delayed deposit services transaction with
8 the same or another licensee, and the periods during which
9 the transactions are outstanding overlap, each day of each
10 respective transaction shall be counted in satisfying the
11 ninety-day restriction. For purposes of this subsection, if a
12 maker of a check is making biweekly payments during a repayment
13 period as provided in section 533D.9, subsection 2, paragraph
14 "e", the repayment period shall not be counted in satisfying the
15 ninety-day restriction.

16 3. a. Each licensee making an election pursuant to this
17 section shall, by October 1, 2011, subscribe to, report to, and
18 utilize an electronic database tracking service to be developed
19 or selected pursuant to rules adopted by the banking division
20 of the department of commerce, that permits the licensee to
21 determine whether a maker of a check has an outstanding unpaid
22 check or debit authorization that is, or reasonably appears to
23 be, connected to a delayed deposit services transaction. Each
24 licensee shall require a maker of a check to sign a written
25 declaration confirming that, pursuant to section 533D.10A,
26 subsection 2, the maker of the check is eligible to enter into
27 a delayed deposit services transaction.

28 b. Records of a licensee and the electronic database
29 tracking service shall be subject to review and examination by
30 the division to determine whether the licensee is in compliance
31 with this section and other applicable provisions of this
32 chapter.

33 c. Information, records, and documents obtained in the
34 performance of the review and examination, including the amount
35 of any outstanding unpaid check or debit authorization and

1 the identity of the maker of the check, are confidential and
 2 shall not be disclosed by the division and are not subject
 3 to subpoena. Such information, records, and documents
 4 do not constitute a public record under chapter 22. The
 5 superintendent may disclose such information to representatives
 6 of other state or federal regulatory authorities and
 7 may release summary complaint information so long as the
 8 information does not specifically identify the complainant.
 9 The superintendent may also provide this information to the
 10 attorney general for purposes of enforcing this chapter.

11 Sec. 5. EFFECTIVE DATE. Section 533D.10A, subsection 2, as
 12 enacted in this Act, takes effect October 1, 2011.

13 EXPLANATION

14 This bill relates to specified aspects of the regulation of
 15 delayed deposit services businesses.

16 The bill provides that the annual percentage rate applicable
 17 to delayed deposit services transactions shall not exceed 36
 18 percent, as computed pursuant to the federal Truth in Lending
 19 Act, unless a licensee elects to impose an alternative higher
 20 rate. This is the same percentage rate limitation imposed as
 21 a restriction or safeguard for military personnel pursuant to
 22 10 U.S.C. 49 § 987. Such an election shall make requirements
 23 regarding indebtedness limitations and electronic database
 24 reporting requirements specified in a subsequent section of the
 25 bill applicable.

26 The bill provides that a licensee must disclose to the maker
 27 of a check that the licensee cannot initiate debt collection
 28 procedures, civil court proceedings, or arbitration to collect
 29 an unpaid check unless the licensee has provided the maker
 30 of a check the opportunity to repay the obligation without
 31 any charges, other than the current \$15 penalty, in biweekly
 32 payments of not more than 10 percent of the face of the check
 33 until the debt is paid in full. The bill adds that during this
 34 repayment period the licensee cannot sell or transfer the debt
 35 owing on the unpaid check and the loan shall not be considered

1 to be in default. However, if the maker of the check fails
2 to honor the repayment obligation, the bill provides that the
3 loan shall be placed in default. The bill makes the failure to
4 conform with these provisions a prohibited act on the part of
5 the licensee, which could subject the licensee to disciplinary
6 action as specified in Code section 533D.12.

7 Additionally, the bill changes a current provision that
8 prohibits a licensee from holding or agreeing to hold a
9 check for more than 31 days to a modified provision that the
10 licensee cannot hold or agree to hold a check for less than 14
11 days. The bill also prohibits a licensee from entering into
12 another transaction with the maker of a check who already has
13 a transaction outstanding with the licensee or from entering
14 into a new transaction within two days of the conclusion
15 of the previous transaction, unless the maker acknowledges
16 in writing specified restrictions relating to successive
17 transactions, applicable penalties, and the opportunity to
18 repay the obligation in installments in the event the check is
19 not negotiable.

20 As previously indicated, the bill authorizes a licensee to
21 impose an annual percentage rate which exceeds 36 percent by
22 filing with the superintendent of banking a written notice
23 of intent. If this election is made, it shall apply to all
24 transactions entered into by the licensee. The bill provides
25 that a licensee may discontinue imposition of an alternative
26 interest rate and consent to imposition of the 36 percent rate
27 otherwise applicable, and a licensee previously imposing the
28 36 percent rate may elect to impose the alternative rate, by
29 submitting a request to the superintendent no more often than
30 annually.

31 The bill provides that a licensee electing to impose
32 an alternative annual percentage rate shall be prohibited
33 from entering into a delayed deposit services transaction
34 that results in the maker of the check being indebted to
35 the licensee, or when aggregated with other delayed deposit

1 service business licensees, for longer than a 90-day period
2 during the preceding 12 months. This provision of the bill
3 takes effect October 1, 2011. Further, the bill requires a
4 licensee making the election, by October 1, 2011, to subscribe
5 to, report to, and utilize an electronic database tracking
6 service developed or selected by the banking division of the
7 department of commerce to monitor the number of transactions
8 entered into by a maker of a check for purposes of complying
9 with this provision. The bill states that licensee records and
10 the database shall be subject to review and examination by the
11 division, and provides that information, records, and documents
12 obtained by the division in the performance of such a review or
13 examination shall be considered confidential.

14 A violation of the bill's provisions will subject a licensee
15 to existing penalty provisions in Code chapter 533D, including
16 possible license suspension or revocation, a civil penalty in
17 an amount not to exceed \$5,000, an administrative fine in an
18 amount not to exceed \$5,000, and the criminal penalty of a
19 serious misdemeanor punishable by confinement for no more than
20 one year and a fine of at least \$315 but not more than \$1,875.